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BEFORE THE

SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

MAY 16 2000

Public Record

VERIFIED COMMENTS OF
OKLAHOMA DEPARTMENT OF TRANSPORTATION

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SURFACE TRANSPORTATION BOARD
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OKLAHOMA DEPARTMENT OF TRANSPORTATION**

In an Advanced Notice of Public Rulemaking ("ANPR") served on March 31, 2000, the Board requested comments on whether it should amend its regulations governing major rail consolidations. The Oklahoma Department of Transportation ("ODOT") is filing these comments in response to the request to indicate its support for changes to the Board's regulations that will "promote and enhance rail competition and/or other public interest goals." ANPR at 3.

Background

ODOT has responsibility for all of Oklahoma's transportation systems, including its railroads. As such, it is involved in the oversight of all phases of the planning and operations of railroads operating in the State, both freight and passenger.

As recently as 1979, there were six Class I carriers operating in the state.[1] With mergers and bankruptcies, that number has been reduced to three. However, 19 class III railroads now operate in the state, preserving service to many of the state's rural areas.

Since the bankruptcy of the Rock Island in 1979, Oklahoma has played a major role in strategic rail purchase, rail rehabilitation and coordination to promote growth and facilitate improved transportation efficiency, and to preserve rail service options throughout the State including in rural agricultural areas. ODOT established an innovative revolving loan fund to support its efforts, and has invested over $43 million ($56 million including matching federal funds) in the purchase and upgrade of rail lines in the State. Through a series of transactions over the years, ODOT now owns lines of railroad totaling approximately 850 miles which are operated by various carriers. An additional 2,850 miles of rail lines in Oklahoma are currently owned by the three Class I railroads (BNSF, UP and KCS) and 19 Class III railroads. A map showing the railroads in the State is attached as Appendix A.

Some of the lines purchased by ODOT had been abandoned by their respective carrier owners; others would have been candidates for abandonment if not purchased by ODOT. ODOT's objective, of course, has been to preserve rail service for Oklahoma industries and farmers, and to provide for the reactivation of passenger service. ODOT has entered into lease/purchase or lease/operating agreements with independent railroads for each line it has acquired. On many of the lines, the rent payable to ODOT is based on the revenues of the operating carriers.

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[1] The Atchison, Topeka & Santa Fe Railway; Chicago, Rock Island & Pacific Railroad ("Rock Island"); Kansas City Southern Railway; Missouri-Kansas-Texas Railroad Company; Missouri Pacific Railroad Company; and St. Louis-San Francisco Railway Company.

Approximately three million carloads of freight move in to, out of, and through Oklahoma each year (based on 1996/1997 statistics). Farm and food products (primarily grain) represent approximately 15% to 20% of the carloads handled by Class I railroads in the State, and almost 25% of the carloads handled by short lines; mixed carloads were approximately 40% of the Class I carloads, and 30% of short line carloads. Additionally, coal made up almost 20% of Class I carloads, but only 10% of the short line carloads.

In 1999 Oklahoma finally saw the commencement of mass transportation of passengers by rail (Amtrak) between Oklahoma City and Fort Worth, Texas over lines of BNSF. Oklahoma is currently working to extend intercity passenger service over lines owned and operated by another Class I freight carrier, and in another instance, plans are for the passenger carrier to operate over lines owned by ODOT and operated by a Class III carrier.

Comments

ODOT is filing these comments to express its views on how the Board's major consolidation procedures should be amended to ensure that the carriers operating in Oklahoma State are not adversely affected by future mergers, and to ensure that the many agricultural and industrial shippers they serve are provided with the greatest amount of competitive service that is reasonably possible. ODOT agrees that the time has come to alter the Board's guidelines "to place a greater emphasis on enhancing, rather than simply preserving, competition." ANPR at 4.

Over the last twenty years, Oklahoma has seen a substantial reduction of Class I service as Class I carriers went bankrupt, voluntarily withdrew and joined together through merger. However, 19 Class III short lines have been organized to serve the rural, largely agricultural shippers that dot Oklahoma's countryside. Many of the shippers on these short lines tend to be smaller country elevators with limited facilities, but which serve an important gathering function for local farmers.[2] Much of ODOT's investment has been directed at preserving this service to smaller rural shippers. However, as a result of mergers and the growth in size of Class I carriers, ODOT has seen various changes that threaten these smaller shippers and the short lines that depend on their business.

As suggested by the Board, ODOT believes that Oklahoma would see few public benefits from further downsizing and rationalizing of rail route systems, and that railroads would be benefitted by enhanced service to customers, instead of the deteriorated service they have seen. ANPR at 2. Rather than improved service, short lines and their customers in Oklahoma have seen reduced frequency of service as merged carriers focus on their ever longer single-line hauls, pricing that benefits larger on-line shippers, and continued enforcement of restrictions that prevent short line customers from obtaining competitive prices or additional services (such as co-loading) that would make better pricing available.

Because of the large number of short lines operating in the State, ODOT is especially concerned that the merger consolidation procedures be amended to protect their competitive position in any future merger. In particular, ODOT supports changes to insure competitive pricing, non-discriminatory car supply, elimination of barriers and reimbursement for merger related losses.

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[2] Elimination of the country elevator would cause the harvest to be trucked further distances to larger collection facilities, adding time and transportation costs, and adding a substantial burden on Oklahoma's secondary roads.

Pricing. The bigger the Class Is have gotten, the less they seem to care about the smaller shippers located in rural areas off the main line. Where there is rail competition, ODOT sees lower prices being offered to shippers. On the other hand, where shippers are captive (particularly when the shipper is located on a captive – operationally or contractually – short line), higher prices that do not reflect increased operating costs for the Class Is are the norm.

Additionally, as Class I carriers have continued to merge and grown larger and larger, their pricing has changed to emphasize their longest hauls and to encourage shippers to invest in larger facilities that can handle 100 car unit grain trains. They have talked about eliminating the 26 car units that had been common in Oklahoma. Few, if any, country elevators have facilities that can handle even 26 car units ot one time. Because of their relatvely low volumes and space constraints, enlargement of facilities is usually not practicable. Further, even if facilities could be expanded, most short-line track infrastucture would not be able to handle 100 car trains. ODOT has already invested to preserve infrastructure, but cannot afford to upgrade lines or loading facilities to handle the new longer trains.[3]

Short lines have attempted to deal with these issues by poviding multiple switches and co-loading between elevators to put together the size units (either 26 or 54 or 100 cars) that the Class Is require, while at the same time making the better pricing available to their customers. From the Class I perspective they are still receiving a unit train at the interchange bound for a single destination; there is no increased handling cost to the Class I. Yet Class Is (which often have retained pricing authority over their short-line spinoffs) limit the the ability of short lines to

[3] These infrastructure problems will only be exacerbated by the introduction of new heavier cars.

co-load from different stations or to perform multiple switches. These pricing decisions may benefit the Class Is, but they hurt the shippers on the branch lines located throughout the State including those that ODOT has purchased.[4] Smaller shippers should not be priced out of the market just because they are small. They should be given the opportunity to compete by receiving fair competitive pricing.

Elimination of barriers. The existence of rail service options can serve as a constraint to higher prices without the need for additional regulation. In examining rail mergers the Board should examine competitive alternatives that are available to shippers, both before and after the transaction. The Board should carefully consider whether the competitive alternatives presented by the applicants truly represent competitive options, or whether there are contractual or operating restrictions that prevent one of the options from being realized.[5]

Short lines are often limited in their ability to route traffic over more than one connecting Class I by "paper barriers" imposed by the Class I that spun them off. Such barriers were originally designed to make the sale more attractive to the short line buyer, while preserving the bulk of revenue for the Class I, and eliminating what was often costly branch line service. The deals were premised on the economics, pricing and service that existed at the time of the sale. However, all of these factors have changed. Class Is have merged and grown larger while the short lines are limited to the lines they bought. Class Is have focused on longer hauls and

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[4] Additionally, to the extent these policies cause ODOT's branch line operators to lose revenue, ODOT loses rental revenue as well.

[5] As is clear from the Oklahoma rail map attached as Exhibit A, Oklahoma shippers no longer need to worry about whether a reduction from three-to-two is a reduction in competition to be addressed by the Board. There are no longer any locations in Oklahoma that have service from three Class I carriers.

larger trains to become more profitable, while short lines can only rely on traffic growth. Many short lines have been around for 5 to 10 years, and the Class I sellers have certainly received substantial value as a result of the barriers they imposed. In any new merger, the applicants should be required to rescind all paper barriers. This will result in additional competitive options for shippers located on short lines and should stimulate both a growth in traffic and improved pricing.

Further, ODOT would support opening terminals by requiring merger applicants to provide switching at an agreed-upon *reasonable* fee, to all exclusively served shippers and short lines located within or adjacent to terminal areas.[6] Of course, if such a condition were imposed for the benefit of short lines, it would have to be further conditioned on the elimination of contractual barriers that would frustrate use of the switching fee to connect with shippers or other carriers.[7]

Service related losses. Oklahoma was spared from the worst of the well-reported service problems that resulted from the last several Class I mergers approved, by the Board. However, despite all the planning, given the sheer magnitude of current mergers, service problems are almost inevitably going to occur. When they do, traffic is disrupted. Shippers often are forced to transload inbound traffic around the Class I "choke point," or to truck outbound traffic to another carrier or to a point beyond the choke point. These actions are

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6 In the recent CSX/NS/Conrail proceeding, the Board expanded the NIT League switching conditions to cover short lines as well as shippers. Since short lines often act as gathering agents, ODOT believes it is often reasonable to treat short lines and shippers similarly.

7 This is similar to the suspension provided for in the "Railroad Industry Agreement" entered into voluntarily by the Class Is and a number of short lines, and filed with the Board in Ex Parte 575.

alternatives for the shipper, but they result in the traffic bypassing the serving short line. Since they have not handled the cars, they do not earn any revenue, despite that the service problem is not theirs. To remedy this, the Board's procedures should be modified to provide that the applicants will pay short lines for traffic lost because any service problems of applicants that result from the transaction.

Cross-border issues. Due to the reliance of Oklahom carriers on agricultural products, in particular grain, ODOT shares the concerns raised by the U.S. Department of Agriculture in the Board's March hearings that cross-border competitive impacts must be addressed in future mergers. Mergers between U.S. and Canadian carriers could unfairly prejudice Oklahoma grain producers, and the railroads that serve them.

Passenger service. Although not one of the items specifically mentioned by the Board in the ANPR, ODOT believes that a full consideration of the public interest effects of a proposed merger must include consideration of the relationship of the merger applicants with mass transit for passengers (both local and intercity). It took many years for ODOT to convince Amtrak to come to the State, and longer to help arrange for operations over the Class I. To succeed, passenger service operators need the cooperation of the Class Is in establishing reasonable service windows, charges and other terms. Both the merger application and any Board order should ensure that the needed reasonable terms are established.

Conclusion

For the reasons set forth above, ODOT requests that the Board amend its merger guidelines to make them more pro-competitive, pro-short line, and pro-mass transit.[8]

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[8] Although ODOT has not proposed specific regulations herein, it expects in its reply to support specific suggestions of other parties that are consistent with the goals expressed herein.

VERIFICATION

I, Neal a. McCaleb , Director of the Oklahoma Department of Transportation, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Comments.

Executed on May 11, 2000.

Neal A. McCaleb

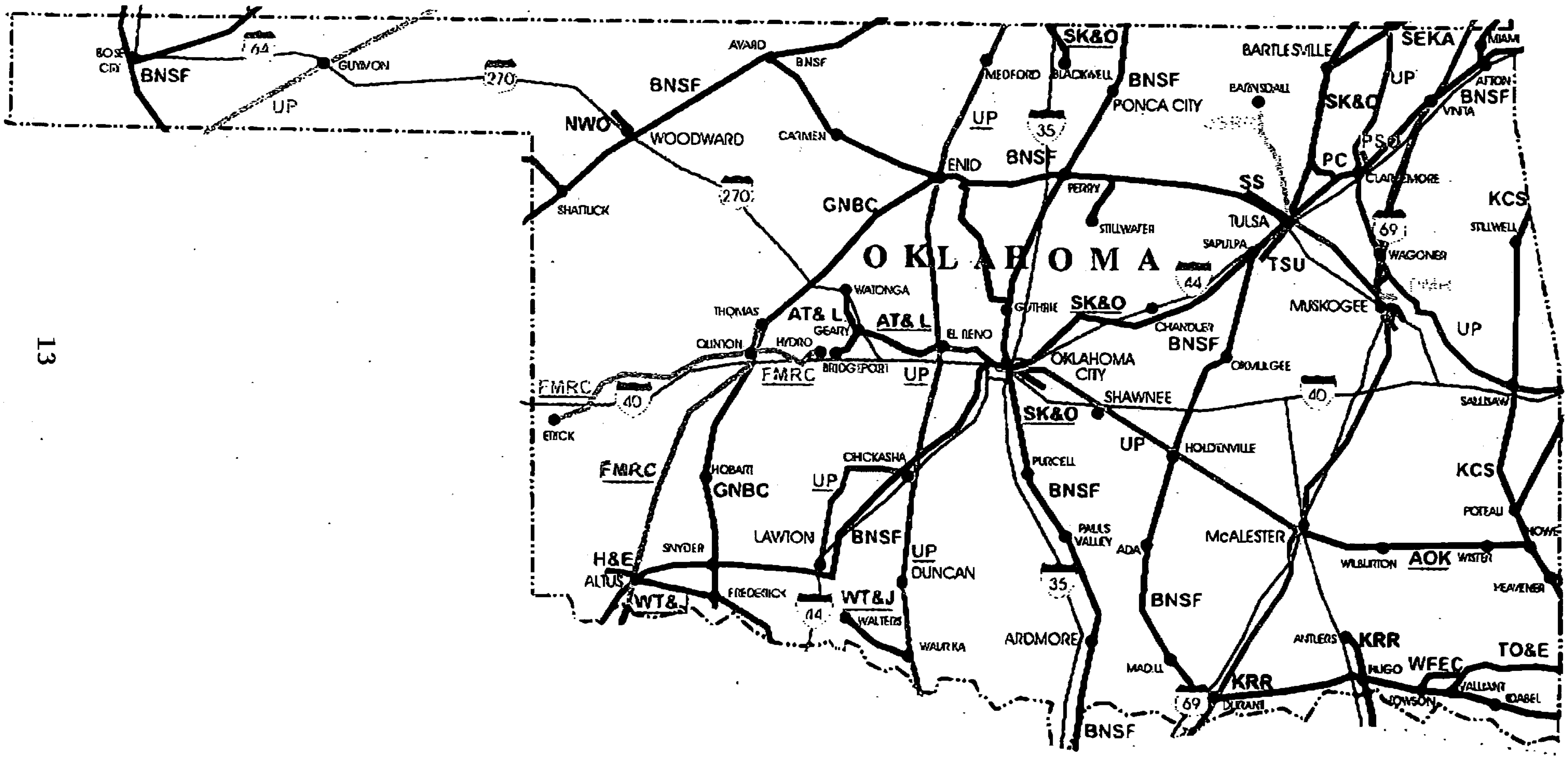
Director - Secretary Transportation

Appendix A

Rail Map

OKLAHOMA RAIL MAP

________ Leased from State



CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Verified Comments of Oklahoma Department of Transportation was served by First Class Mail, Postage Prepaid, on all Parties of Record on the attached service list.

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